EDITOR'S NOTE

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91-492

(1)



No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RICHARD W. PLYMALE - PETITIONER

vs.

DONALD R. FREEMAN, ESQ. ET. AL.- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

RICHARD W. PLYMALE
211 E. South Street,
Davison, MI 48423-1699
(313) 653-5325
Counsel for Petitioner

## QUESTION PRESENTED

Did the Sixth District Court of Appeals act improperly to dismiss plaintiff Plymale's appeal for action and to deny his "day in court" of petition for redress of violations of my constitutional rights dismissed on the basis of "substantial infirmities"? Infirmitiy is defined as feebleness or weakness or disability of a person in body or mind. The fact that I am a disbaled veteran is not an issue in this case, nor should it be, and the raising of non-issues as a substantial reason for dismissal is a violation of my basic constitutional rights to a fair amd impartial judiciary in itself, and further, it is most obnoxious to me.

The subsidiary questions fairly included are:

1. Whether they acted prejudicially in favor of the defendants, several of whom are court officers for the purpose of c.y.a.

2. Whether the Appeals Court acted prejudicially to accept a fee for special standing of one of the defendants, but yet refused acceptance of the same fee submitted by plaintiff in the same manner, when the underlying issues of the case presented could lead to Bar exclusion, and 3. Whether any and every effort was made to exercise the judicial duty to thoroughly investigate review and understand my complaint, irrespective of the identity of the defendants. and in spite of lack of legal jargon. In other words, an inartfully constructed complaint does not in any way invalidate it or should cause leass than an impartial review. This partiality seems to be referred to as "consideration".

FOOTNOTE

ALL PARTIES TO THE PROCEEDINGS ARE AS FOLLOWS:

DONALD R. FREEMAN, Esq.; JUDITH A. FULLERTON; MICHAEL J. MANGAPORA; ROBERT WEYHING, III; MICHAEL V. KELL; BARRY L. MOON; H. WILLIAM BUTLER; DONALD G. ROCKWELL; THOMAS YEOTIS; ROBERT M. RANSOM; WILLIAM A. REDMOND; STEWART A. NEWBLATT; JOHN DOE, John/Jane Doe 1, John/Jane Doe 2 each and every associate of the court officers represented above; JURIDICAL PERSON OF THE CHIEF ADMINISTRATIVE OFFICE OF THE JUDICIAL COURT SYSTEM OF THE STATE OF THE STATE OF MICHIGAN,

Defendants

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INDEX TO APPENDICES

DICTIONARIES

**Infirmity.** Disability; feebleness. In an application for insurance an ailment or disease of a substantial character, which apparently in some material degree impairs the physical condition and health of the applicant and increases the chance of his death or sickness and which if known, would have been likely to deter the insurance company from issuing the policy. See also **Incapacity.**

Black's Law Dictionary

**infirmity** (in-fir'mĭ-te) [L. *infirmitas*]. 1. A feeble or weak state of the body or mind. 2. A disease or condition producing weakness.

Dorland's Medical Dictioary

**Infirmity.** [L. *infirmitas.*] An abnormal, more or less disabling, condition of mind or body.

Stedman's Medical Dictionary

**in·fir·mi·ty** (in-fûr'mə-tĭ), *n.* 1. a being infirm; feebleness; weakness. 2. [*pl.* -TIES], *a*) a physical weakness or defect. *b*) a moral weakness.

Webster's New World Dictionary

| CASE | | |
|---|---|---|
| Kras v. _____ | (1973) | Justice Blackmun demands all pay fees alike |

NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1991

RICHARD W. PLYMALE, Petitioner

vs,

DONALD R. FREEMAN, Esq. ET. AL., Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Richard W. Plymale, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court

of Appeals for the Sixth Circuit which dismissed from standing my various complaints and requesr for redress of my greviences as guaranteed by the Constitution of the United States and its Amendments, and failed to order a fair, impartial trial in the proper venue for same.

## OPINIONS BELOW

The opinion of the Court of Appeals appears as Appendix A to this petition. The written opinion of the District Court for the Eastern District of Michigan, Northern Division, appears as Appendix B to this petition.

## JURISDICTION

The Court of Appeals opinion in this matter was issued April 12, 1991, and is set forth in Appendix A. This Court's jurisdiction is invoked under all applicable United States Law.

## CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

The Constitution of the United States in its entirity through the 18th amendment is set forth in Appendix C. I claim the equal application of all provisions. It is an oxymoron in not holding court officers accountable for the enforcement of the equal application of the Consitution and the Law, and not to ignore the fact of discrimination is against a disables veteran, and using this circumstance for discrimination is in and if itself a violation of U.S. Law. It is further obnixious to ferret out specific provisions as examples: not unlike going to the doctor with a "belly-ache"; the doctor doesn't expect to hear "I have epigastric pain consistant with mucosal erosion" as a complaint.

## STATEMENT OF THE CASE

Petitioner has brought complaint to the United States District Court, Eastern District of Michigan, Northern Division. This suit was dismissed for no good cause veing given and for the bad cause of the relief of collegial associates.

The basis od the dismissal were "infirmities", which is defined as a descriptor of an individual person, and not a thing, as shown from the references given, which are from general, medical, and kegal dictionaries. Further, the use of this reference to a disabled veteran of the United States is an arch-typical example of the complaints raised in the suit, which seems to fall under the activities covered by the

R.I.C.O. Act. Further, the reference is made to "rule 8", but every effort even to discover what "rule 8" is about has been thwarted.

The Supreme Court of the United States is the court of "last resort" for the assertion of the righting of the basic constitutional wrongs that I have sustained.

I anticipate a granting of the writ of certiori, and subsequently, a remand for trial in the local venue.

Moreover, the United States Appeals Court accepted the check for granting the special standing of a defendant, yet, returned uncashed my check for the same purpose of belonging to the "club", with the fact that the "club", the agency of qualification is stated as a defendant to the action.

Moreover, it is the aegis of the Bar, the "club" to inforce the specific rules that govern member's conduct, so failure to do so, effectively, removes the equal protection provision of the constitution, as well as gets around United States Supreme Court Rule 5, governing the upright and according to law conduct which is brought to question by the initial action filed in U. S. District Court. The basis of the case is the effect upon the basic constitutional rights of every U. S. Citizen confired upon them by the Constitution and it's amendments. With the accpetance of these rights comes the duty and responsibility to defend and inforce these rights, specifically herein, the provision of the equal protection of the laws by inforcement of the special laws governing the conduct of court officers.

In this case, Donald R. Freeman, Esq. allowed the introduction and maintance of an affidavit that he knew was false, and a violation of the Rule 1 of Court Officers conduct, and worked to conceal the fact that he had this information. With these rights comes the responsibility of citizenship which is confired upon every citizen. When an individual elects to be a public official, an attorney, or a judicial officer, he/she accepts along with the special privilege and rights, an equal responsibility and duty to defend, maintain and protect and secure these constitutional rights of a fair and impartial judiciary for all citizens, irrespective of circumstance. Furhter, to violate, or to allow or permit the violation of the basic constitutional rights as well as the laws whose aegis it is to enforce

these rights, especially in the situation to gain a benefit or an advantage, is most repugnant, reprehensible, and dewcructive of the basic principles of the Cobstitution and tends to destroy faith in the integritity of the whole judicial system.

With theis increased responsibility as a matter of the preservation of these basic rights for all subject citizens, it is incumbent that htere is a viable, operative, thoroughgoing mechanism to reviewm evaluate, and repair any breaches in their responsibility. It is further incimbent upon this mechanism to take any and all necessary action to remove from operation <u>any</u> individual or organization which breaches their responsibility, and this mechanism should act to remove the basic constitutional rights of any perpetrators of any constitutional wrong-doing: e.g. "use it or lose it".

It seems logical that those responsible, as part of their breach of responsibility, lose the fruits of their rights themselves, in such matters as voting, obtaining any license from the government, welfare, and the such. This is not unlike the "S.P.Q.R. concept of the Roman Empire, or the experince of the Apostle Paul in the Bible. Constitutional rights are not like ripe apples, they just don't drop off trees. They have to be asserted, apparently, which in an unfortunate state of affairs.

I think that to have to go to the extreme action of an application to the Supreme Court of the United States of America is a little extreme in my effort that i have to do to exert the effort of securing the basic rights that I have for myself as an ordinary U. S. Citizen, and not a public official or a court officer. I claim the right to be unfettered with the presence in

court of known suborned perjury, to have my handicap illuminated in court when it has no bearing on the issues, and to have my personal medical records, obtained by subpoena, made public as a source of embarassment. I have 24 separate complaints, all of which not even been subject to any review, Contralaterally, there are two subsidary issues presented here: (1) the lower court acted improperly in denying my "day in court" on the basis of the affront of being a disables veteran- "infirmities", and (2) the lower court acted improperly in accepting the money for registration of a court officer, knowing that his conduct was an issue in this case presented, and yet failing to accpet and rejecting my check for the same amount to secure the same consideration. Stated another way, is the court an exclusive club which routinely

and knowingly violated my constitutional rights itself?

The District Court objected to the "bulk" of the complaints presented.

Summary of Count #2 is as follows:

Attorney Michael V. Kell, Esq, improperly obtained my personal medical records whic disclosed to him the fact that I had a medical condition consisting of a permanent injury and damage to my larynx. He forced me to be present and to testify at length in court to the point that I developed a severe laryngitis, and I was vulnerable to experience this pain in my throat. He alluded to the fact that I was clutching my throat as some sort of "body language" of guilt. This is a clear, abusive, obvious and serious violation of my rights under the Constitution and I DEMAND redress.

I have been asked on several occasions as to what I think the chances are that the United States Supreme Court will act favorable to my petition. My ecpectation is about 100% for two reasons: My basic Constitutional rights have been seriously and definitively violated, and I have been deprived of my'day in court' for redress, and (2) the fact that the lower court itself has acted to depreciate my constitutional rights is most vexacious to me, would me to most U. S. Citizens, and should be to the U. S. Supreme Court.

There is a distant, but mounting clamor for the limitations of service of United States Senators and Representatives as has been done with the Presidentcy. It would seem that Federal judges would, could, and should be included in this limitation for the expense of about three additional

inches of typewriter ribbon on the legislation. It is conceivable that this case could be fuel to the "cause cleebre" fire with widespread appeal and demand for legislative and constitutional amendment action. The news media would pick up on this in a most awesome manner.

I want ti reiterate that I made every possible effort even to discover what "rule 8" was about. The local library had nothing, The United States District Court locally had no such thing as a rule book, according to the Clerk, and she didn't have any idea where to get such a thing. I frequently use the various libraries at the University of Michigan, but the Law Library is "not open" to anyone who does not have a student identification card to the Law School, whereas the other libraries are not restricted in any manner. The local

"law library" of the county courthouse is "not open to the public". So apparent non-compliance is the result of not knowing in what manner to comply, which obviously is a direct violation of my basic constitutional right to access to the federal courts.

## REASONS FOR GRANTING THE WRIT

The obvious reason to grant this writ of certiori is to grant the first step in affording me an opportunity to assert my basic constitutional rights, and finding that they must be vigorously pursued, or they are apparently lost; but a second reason is to restore basic confidence in the fairness, equity, impartiality and constitutionality of the Court system itself.

People familiar with my tribulations have asked me why I haven't gone to any of various special interest groups for assistance, and the answer is that I harbor the ideology that justice will ultimately prevail and the Supreme Court will act affirmatively, and

my personal interests, as well as those of our nation will be better served. Candidly, I don't think that a 60 Minutes expose would help the Supreme Court in their deliberations, but i'm sure it would cause a commotion in Congress; no one would disagree with that.

## CONCLUSIONS

For the reasons of granting the opportunity for this petitioner to assert his basic constitutional rights and protections, and to promote the marmony and good-will of the Supreme Court, a writ of certiori should promptly be issued to review the judgement and opinion of the Court of Appeals as it reviewed the subjects and substance of the matters ressented, and if this Court elects not to address the issues presented in this writ at this time, it is fervently requested tha the writ issue and that the matters contained herein be remanded to the Court of Appeals for redetermination in

light of this Courts opinions in the Constitution, in Kras, 1973, and the various state and federal laws regarding discrimination against disabled veterans, and the prhibition contained in those laws.

Respectfully submitted,

Dated: June 28, 1991

Richard W. Plymale

Richard W. Plymale

Petitioner

APPENDIX A

No. 90-2202

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | |
|---|---|
| RICHARD W. PLYMALE,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>DONALD R. FREEMAN, Esq.; JUDITH A FULLERTON; MICHAEL J. MANGAPORA; ROBERT WEYHING, III; MICHAEL V. KELL; BARRY L. MOON; H. WILLIAM BUTLER; DONALD G. ROCKWELL; THOMAS YEOTIS; ROBERT M. RANSOM; WILLIAN A. REDMOND; STEWART A. NEWBLATT; JOHN DOE, John/Jane Doe 1, John/Jane Doe 2 each and every associate of the court officers represented above; JURIDICAL PERSON OF THE CHIEF ADMINISTRATIVE OFFICE OF THE JUDICIAL COURT SYSTEM OF THE STATE OF THE STATE OF MICHIGAN,<br><br>Defendants-Appellees. | ) O R D E R |

BEFORE: KENNEDY and JONES, Circuit Judges,

and FORESTER, District Judge.*

Richard W. Plymale, a pro se Michigan resident, appeals the district court's order dismissing his action filed pursuant to 42 U.S.C. § 1983 and the Racketeer Influenced Corrupt Organization Act (RICO), 18 U.S.C. 1961. The case has been referred to a panel of the court pursuant to Rule 9(a). Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking damages under 1983 and treble damages under RICO, Plymale sued numerous attorneys, (Mangapora, Weyhing III, Lekk, Butler, Moon, Rockwell, and Redmond) several judges (Newblatt, Freeman, Fullerton, Yeotis, and Ransom) as well as the "Judicial Person of the

Chief Administrative Office of the Judicial Court System of the State of Michigan." The complaint does not state that defendants are being sued in their individual as well as official capacity. The action arose out of Plymale's unsuccessful and lengthy state court litigation concerning his billings to the Delta Dental Plan for the application of a d dental treatment known as "Zercate Treatment Paste." Plymale is a dentist licensed to practice in Michigan.

Plymale raised numerous allegations in a rambling complain which is 119 pages long and encompasses twenty-four counts. In his complaint, Plymale relied on the principle of "lex talionis." i.e., "an eye for an eye and no constitutional rights for no constitutional rights."

Thus, he sought to have the court revoke the citizenship of all the defendants, declare that their constitutional rights are "null," and have their legal status changed to "alien resident." He also requested: (1) that the entire court system of the state of Michigan be altered to a buddy system so that no judge could act without the con currence of another; (2) that the federal courts replace the elected judges of the Supreme Court with senior judges from the state Court of Appeals; and (3) that the state regulatory agencies, such as the Nichigan Department of Licensing and Regulation.

The current complaint, filed in December 1989, is Plymale's third complaint. Plymale's first complaint was struck from the record by Judge Newblatt, who ordered thar an amended complaint be filed. The amended complaint which was filed in July 1989, was dismissed without prejudice by

Judge Newblatt because it failed to comply with Fed, R. Civ. P. 8(a).

After a review, the district court dismissed the complaint with prejudice for failure to comply with Fed. R. Civ. 8. The court also noted that the complaint contained multiple defects which could not be cured by repleading. Plymale has filed a timely appeal. In addition, he has filed a separate motion for miscellaneous relief, which asks this court to grant him "standing" on appeal.

Upon review, we conclude that the district court did not abuse its discretion in dismissing Plymale's complaint for failure to comply with Rule 8. See Michaelis v. Nebraska Bar Association, 717 F 2

437,439 (8th Cir. 1193); Nevijel v. North Coast Life Ins. Co., 651 F 2d 671,673 (9th Cir.1981) (per curiam).

Accordingly, the motion for miscellaneous relief is denied, and the district court's judgement is affirmed for the reasons stated in the district court's order datee September 24, 1990. Rule 9(b)(5) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green, ji
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

NORTHERN DIVISION

---

RICHARD W. PLYMALE,

Plaintiff,

v.

DONALD R. FREEMAN, et al.,

Defendents.

---

Case No: 89-CV-10321-BC

---

ORDER OF DISMISSAL

Plaintiff Richard Plymale, acting in pro per, sues for damages for alleged violation of constitutional rights and

He appeals to the "lex talionis" ("...an 'eye for an eye' and no constitutional rights for no constitutional rights"). He asks that the entire court system of Michigan, which he accuses of corruptness, be altered to a buddy system where no one judge could act without the concurrence of another. He asks that this court replace the elected judges of the Supreme Court of Michigan by senior Court of Appeals judges"...as determined by length of service." Plaintiff suggests that "regulatory agencies", presumably the Michigan Judicial Tenure Commission by tone of the plaintiff's complaint, are to be replaced by a division of the Michigan department of Licensing and Regulation (or "another such independent regulatory agency").

fendants in plaintiff's first lawsuit, Judge Newblatt entered an order striking plaintiff's complaint and directing that an amended complaint complying with the Federal Rules of Civil Procedure be filed within thirteen days.

An amended complaint was filed by plaintiff on July 26, 1989. Judge Newblatt ruled, however, that the amended complaint was defective as well and plaintiff's amended complaint was dismissed (without prejudice) for the specific reason that it failed to comply with Fed.R.Civ.P. 8(a) requiring a proper jurisdictional statement and a short claim showing entitlement to relief. Upon the plaintiff's receipt of this ruling from the court, Judge Newblatt promptly became defendant Newblatt.

Plaintiff's present lawsuit was filed on December 27, 1989. A comparison of the present complaint with the original complaint, defendants contend, reveals that except with the addition of Judge Newblatt as a defendant, plaintiff's new complaint adds nothing of significance to an understanding of his claims except unintelligible RICO allegations and bulk.

At risk of becoming an unwilling and uninvited "member of the enterprise", this court now dismissed the complaint, with prejudice, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. Because the complaint contains multiple defects upon which dismissal may be granted for the particular

defendants, the court concludes that there are substantial infirmities in this suit which make repleading moot. Crumpacker v. Civiletti, 90 F.R.D. 326 (1981). No Rule 11 sanctions will be awarded.

[1]In actuality, the number of defendants may not be limited to thirteen; it may approach the infinite. Plaintiff did not stop with "John and Jane Doe", but denominated "John/Jane Doe 1, J/J Doe 2 . . .n". The mathematical signifcance of the plaintiff's configuration "...n" appears intended to designate as defendant everyone not otherwise specifically named, and to do so to the "nth" number. The "n" in this usage stands for an indefinite ordinal number infinitely large, and this would appear to implicate all human souls on the planet.

ORDER

IT IS ORDERED that this matter is DISMISSED WITH PREJUDICE.

Entered this 20th day of September, 1990

BY THE COURT:

/S/

ROBERT H. CLELAND
UNITED STATES DISTRICT
JUDGE

# APPENDIX C

## THE CONSTITUTION OF THE UNITED STSTES

### Preamble

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

(emphasis added)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RICHARD W. PLYMALE - PETITIONER

vs.

DONALD R. FREEMAN, ESQ. ET. AL.- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

No. 91-492

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RICHARD W. PLYMALE, *Petitioner*,

vs.

DONALD R. FREEMAN, ESQ., JUDITH A. FULLERTON, MICHAEL J. MANGAPORA, ROBERT WEYHING, III, MICHAEL V. KELL, BARRY L. MOON, H. WILLIAM BUTLER, DONALD G. ROCKWELL, THOMAS YEOTIS, ROBERT M. RANSOM, WILLIAM A. REDMOND, STEWART A. NEWBLATT, JOHN DOE, John/Jane Doe 1, John/Jane Doe 2 each and every associate of the court officers represented above, JURIDICAL PERSON OF THE CHIEF ADMINISTRATIVE OFFICE OF THE JUDICIAL COURT SYSTEM OF THE STATE OF MICHIGAN, *Respondents*,

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT**

NOREEN L. SLANK
Attorney for Respondents
Robert Weyhing, III, Michael V. Kell
and H. William Butler
4000 Town Center, Suite 909
Southfield, Michigan 48075-1473
(313) 355-4141

## STATEMENT OF QUESTION PRESENTED

DID PETITIONER'S 119-PAGE, 24-COUNT COMPLAINT VIOLATE RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH REQUIRES SHORT, PLAIN, SIMPLE, CONCISE AND DIRECT PLEADINGS?

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## STATEMENT OF THE CASE

### Procedural

Petitioner, Richard Plymale, acting in pro se, is suing for damages for alleged violation of constitutional rights and for treble damages under the Racketeer-Influenced Corrupt Organizations Act (RICO). [Complaint] Named as defendants are Michigan Attorneys Michael Mangapora, Robert Weyhing III, Michael Kell, William Butler, Barry Moon, Donald Rockwell, William Redmond, and Federal District Court Judge Stewart Newblatt of the Eastern District of Michigan, and state Circuit Court Judges Donald Freeman, Judith Fullerton, Thomas Yeotis and Robert Ransom. [Id.] Also named as defendants are the "Juridical Person of the Chief Administrative Office of the Judicial Court Systems of the State of Michigan" and "John Doe, John/Jane Doe 1, John/Jane Doe 2, each and every

associate of the court officers represented above". [Id.]

Plaintiff's Complaint was dismissed with prejudice by federal district court Judge Robert H. Cleland "for failure to comply with Rule 8 of the Federal Rules of Civil Procedure". [Petitioner's Appendix B, Order of Dismissal, P.3]

Plaintiff claimed an appeal as right to the Court of Appeals for the Sixth Circuit. By order filed April 12, 1991, with mandate issued May 13, 1991, the dismissal of the District Court was affirmed. A panel affirmed the dismissal without oral argument, finding the District Court "did not abuse its discretion in dismissing Plymale's Complaint for failure to comply with Rule 8."

Factual

Richard Plymale, adjudging himself aggrieved via his unsuccessful protracted

state court litigation on the question of whether he, a dentist, acted properly in billing Delta Dental for application of a product known as "Zercate Treatment Paste", sued numerous defendants seeking an assortment of odd and improper remedies. [Complaint]

Dr. Plymale urged that the District Court declare that all the defendants' citizenship be revoked, that their constitutional rights be declared null, and that their "status" be changed to "alien resident" under the supervision of the Department of Immigration and Naturalization Services. [Id.] He appealed to the "lex talionis" ("... an 'eye for an eye' and no constitutional rights for no constitutional rights"). [Id.] He asked that the entire court system of Michigan, which he accused of corruptness, be altered to a buddy system where no one judge could act without the concurrence of another. [Id.] He

asked that the District Court replace the elected Judges of the Supreme Court of Michigan by senior Court of Appeals Judges "... as determined by length of service". [Id.] Dr. Plymale suggested that "regulatory agencies", apparently the Michigan Judicial Tenure Commission, should be replaced by a division of the Michigan Department of Licensing and Regulation (or "another such independent regulatory agency"). [Id.]

Defendant Attorneys Weyhing, Kell and Butler represented Delta Dental in certain of the underlying proceedings of which plaintiff complains. These defendants are named within 15 of the 24 Counts which plaintiff's 119-page (unnumbered pages) Complaint identifies. [Id.] The gist of those individual Counts are described by plaintiff in the first paragraph following each of his Count ("Complaint") designations. [Id.] The nature of each Count

most frequently defies paraphrasing and, frankly, defendants have been unable to offer the Courts which have reviewed this matter any further assistance in determining what plaintiff is talking about.

Plaintiff's claims are:

> COUNT I - "... knowing toleration of the presentation of absolutely and patently false information in a court of law and the action based on it, with the knowledge that it was malicious." [including re: Weyhing and Kell]
>
> COUNT II - "...malicious misuse of personal, private information obtained under color of a subpoena..." [including re: Weyhing and Kell]
>
> COUNT III - "...the use of United States Letter Patent information fraudulently, and with the intent to obtain the use and benefit of this intellectual property without proper compensation" [including re: Butler]
>
> COUNT IV - "...the utilization of perjured testimony [sic] as fact, and the basis for the finding of fact wrongfully" [including re: Weyhing and Kell]

COUNT V. - "...the failure to distinguish specifics to avoid false assumptions based on vague and inaccurate statements [sic] and to allow injury from their use" [including re: Weyhing and Kell]

COUNT VI - "...concerns the unfair application of procedural rules" [including re: Weyhing, Kell and Butler]

COUNT VII - "...concerns the impeachment of a finding of a court for improper conduct in judgment" [including re: Weyhing and Kell]

COUNT VIII - "...deals with the financial interest of an academic institution and the effect of their financial interest" [including re: Weyhing and Kell]

COUNT IX - "...deals with the conflict of interest between a profit and a non-profit organization" [including re: Weyhing and Kell and "all associated [sic] of Clark, Klein and Beaumont at all times"]

COUNT X - "...involves the profit business activities of a tax-payer supported university" [including re: Weyhing and Kell]

COUNT XI - "...concerns the malicious failure of a regulatory agency to objectively carry out its appointed duty" [including re: Weyhing and Kell]

COUNT XII - "...concerns the failure to produce vindicating 'new evidence' and the deliberate concealing of fact of material importance" [including re: Weyhing and Kell]

COUNT XIII - "...involves the failure to remove slander form public official records" [including re: Weyhing and Kell]

COUNT XIV - "...is concerned with the maintenance of testimony adjudged [sic] to be false" [including re: Weyhing and Kell]

COUNT XV - "...is about a failure to answer a subpoena without penalty..." [including re: Weyhing and Kell]

This was plaintiff's second Federal District Court Complaint against Attorneys Weyhing, Kell and Butler, et al. [Order of Dismissal, p. 2] Plaintiff's first Federal District Court complaint, Plymale v. Freeman, et al, No. 88-CV-40163-FL, was assigned to

Judge (later defendant) Newblatt. [Id.] After motions to dismiss were filed by several of the attorney and judicial defendants in plaintiff's first lawsuit, Judge Newblatt entered an order striking plaintiff's Complaint and directing that an amended complaint complying with the Federal Rules of Civil Procedure be filed within 13 days. [Id.]

An amended complaint was filed by plaintiff in that prior action. [Id.] Judge Newblatt ruled, however, that the amended complaint was defective as well and plaintiff's amended complaint was dismissed (without prejudice) for the specified reason that it failed to comply with Fed. R. Civ. P. 8(a) requiring a proper jurisdictional statement and a short claim showing entitlement to relief. [Id., pp. 2-3]

Plaintiff's present lawsuit was filed on December 27, 1989. [R.1; Complaint] A comparison of the present Complaint with the original complaint reveals that, except with the addition of Federal District Court Judge Newblatt as a defendant, plaintiff's new Complaint added nothing of significance to an understanding of his claims except unintelligible RICO allegations and bulk. [Id.]

Defendants Weyhing, Kell and Butler answered plaintiff's Complaint with a Motion to Dismiss, asking the District Court, the Honorable Robert Cleland, to dismiss plaintiff's Complaint with prejudice. [Respondents' Motion to Dismiss] Defendants argued that plaintiff's Complaint violated Fed. R. Civ. P. 8 which requires short, plain, simple, concise and direct pleadings. [Id.]

Other defendants filed similar Motions to Dismiss based on Rule 8 and other additional grounds.

Defendants submitted that even affording this pro se plaintiff the benefit of a greatly relaxed attention to the formal requirement of proper pleading, his Complaint was so deficient as to require dismissal. Given the fact that this was a reinstituted lawsuit following a prior involuntary dismissal, and given plaintiff's unsuccessful attempt to provide the amendment called for by Judge Newblatt in his first federal lawsuit, defendants also submitted that dismissal with prejudice was in order.

On September 20, 1990, the District Court Judge Robert Cleland entered an Order of Dismissal, dismissing plaintiff's Complaint for failure to comply with Fed. R. Civ. P. 8. Judge Cleland ordered that plaintiff's

Complaint be dismissed "with prejudice", finding that "because the Complaint contains multiple defects upon which dismissal may be granted for the particular defendants", these "substantial infirmities" made "repleading moot". [Dist. Ct. Op., p. 3.] Plaintiff appealed the Order of Dismissal to the Sixth Circuit Court of Appeals, which affirmed the dismissal, finding no abuse of discretion.

## SUMMARY OF ARGUMENT

Richard Plymale seeks remedies and raises claims which remain incomprehensible despite the fact that, in his first lawsuit, he filed a complaint and an amended complaint (eventually dismissed without prejudice) and received the benefit of Judge Newblatt's directives regarding Fed. R. Civ. P. 8. When his second lawsuit was filed, joining Judge Newblatt as a defendant, the parties found that the confusion and imprecision was compounded. Given that plaintiff failed to set forth a short, plain statement of his jurisdictional basis and his claim, dismissal was proper. Given the aggravated circumstances evident in Dr. Plymale's second lawsuit against the parties, with a renewed and exacerbated round of Fed. R. Civ. P. 8 violations, dismissal with prejudice was proper.

## ARGUMENT

GIVEN THE NUMEROUS VIOLATIONS OF THE FEDERAL RULES REGARDING THE FORM OF PLEADINGS, PLAINTIFF'S COMPLAINT WAS PROPERLY DISMISSED; GIVEN THE NATURE OF THE VIOLATIONS AND THE FACT THAT THIS WAS A REINSTITUTED COMPLAINT FOLLOWING AN EARLIER COMPLAINT WHERE AMENDMENTS WERE ALLOWED AND PLAINTIFF WAS STILL UNABLE TO CURE THE DEFECTS, DISMISSAL WITH PREJUDICE WAS PROPER.

### A.

### Plaintiff failed to set forth a short and plain statement of the jurisdictional bases of his Complaint or of his claims showing that he was entitled to relief, Fed. R. Civ. P. 8(a)(1) and (2), and the averments were not simple, concise and direct, as required, Fed. R. Civ. P. 8(e).

Fed. R. Civ. P. 8(a)(1) and (2) provide:

> A pleading which sets forth a claim of relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief.

Fed. R. Civ. P. 8(e) emphasizes and summarizes the requirement of clarity in pleading:

> Each averment of a pleading shall be simple, concise and direct. * * *

Plaintiff's Complaint pled that Plaintiff is a Michigan resident but failed to identify the citizenship of any of the Defendants. Reference was made to Section 1983 of the "1971 Civil Rights Act" and to the "Racket Influenced Corrupt Organization Act of 1970" at the start of the Complaint, but these references were not linked to any of the specific 24 "Complaints" [counts] included within the pleading. Thus, "... the buckshot method of pleading leaves to the court and the other parties the task of analyzing and determining the relevancy and pertinency of the cited statutes to each claim and in relation to each of the defendants, Woody [v Sterling Aluminum] 243 F. Supp. [755] at 7630,

a task which properly should rest with plaintiff", Crumpacker v. Civiletti, 90 F.R.D. 326 (N.D. Ind, 1981). Further, with the numerous vague references to "Juridical" [sic] persons and "each and every associate of...", it was not even possible to know the identity of all the persons plaintiff contended he was suing. Fed. R. Civ. P. 8(a)(1) was offended.

Even more egregious was plaintiff's violation of Fed. R. Civ. P. 8(a)(2) and 8(e). The rambling, frequently unintelligible, sometimes scandalous nature of plaintiff's pleadings made it impossible for the lower courts (or for the defendants) to understand what plaintiff was talking about during most of the 119 pages of his Complaint. Neither defendants nor the lower courts could know how plaintiff purported to get to federal court or why. "The law does not require, nor does justice demand, that a judge must grope

through pages of irrational, prolix and redundant pleadings", Passic v. State, 98 F. Supp. 1015, 1016 (E.D. Mi., 1951). U.S. General v. City of Joliet, 598 F.2d 1050, 1053 (7th Cir., 1979), articulates some of the general concerns propelling Rule 8:

> Federal pleading practice even under the most liberal view does not mean that all the rules may be ignored. Some understandable allegations, even if inartfully drawn, remain essential to any effort to formulate a recognizable issue for disposition on its merits.

B.
Dismissal was the proper remedy for violation of Fed. R. Civ. P. 8.

Even plaintiffs appearing without the aid of legal counsel, are to be held to the standards of Fed. R. Civ. P. 8(a)(2) and 8(e). In Crumpacker, supra, the District Court dismissed a pro se plaintiff's Complaint, with prejudice, for failure to comply with 8(a)(1) and (2). The court found the 53-page

complaint "overly-long", "rambling", employing a "circuitous style", with "irrelevant and derogatory comments" directed at defendants. In Holsey v. Collins, 90 F.R.D. 122 (D. Md., 1981), the District Court dismissed a §1983 civil rights claim filed pro se, finding the Complaint "voluminous" and "manageable only with an uneconomical expenditure of resources". Explained the court: "Even pro se litigants... must meet certain minimal standards of pleading...". In In Re: "Santa Barbara Like It Is Today" Copyright Infringement, 94 F.R.D. 105 (D. Nev., 1982), the pro se litigant was not allowed to file an amended complaint and the Complaint was dismissed with prejudice for failure to comply with Fed. R. Civ. P. 8 concerns. The court noted, among other points, that the complaint was "confusing as to what claims are asserted and any factual basis for the claims" and that

it was "conclusory and contain[ed] disparate and unrelated allegations". The court found it would be a "travesty of justice" to require the defendants to answer the Complaint or to be subject to discovery.

What was stated of the complaint in Brown v. Califano, 75 F.R.D. 497, 499 (D. DC, 1977) and reiterated in the Santa Barbara... litigation applies with equal force to the present case:

> The pleading filed in this case is indeed a confused and rambling narrative of charges and conclusions concerning numerous parties, organizations and agencies. The complaint contains an untidy assortment of claims that are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions, sharp harangues, and personal comments. Nor has plaintiff alleged with even modest particularity the dates and places of the transactions of which he complains. It belabors the obvious to conclude that the complaint filed in this action falls far short of the admittedly liberal standard set in F. R. Civ. P. 8(a).

In accord as to dismissal resulting from violation of rules of pleadings such as those set forth at Fed. R. Civ. P. 8(a)(2) and/or (e), see, for example: Ausherman v. Stump, 643 F.2d 715 (10th Cir., 1981) [court concludes that suit does not involve patent rights, as claimed, and finds complaint violative of 8(a) in that it is "prolix", a "rambling narrative", with "the various causes of action... commingled"]; Friedman v. Younger, 46 F.R.D. 444, 447 (C.D. Cal, 1969) ["Where a complaint alleging a violation of civil rights is... verbose, confused and redundant, the defendants are entitled to a dismissal"]; Brown, supra, at 499 [Dismissal under Rule 8 as to a complaint containing "a confused and rambling narrative of charges and conclusions"]; Brainard v. Potratz, 421 F. Supp. 836, 839 (N.D. Ill., 1976) aff'd 566 F.2d 1177 (7th Cir., 1977) [Dismissed under

Rule 8 as to a complaint that was "prolix, argumentative, and replete with legal conclusions"].

C.

The Sixth Circuit acted properly in affirming the District Court's Dismissal with prejudice. This was the proper remedy for Rule 8 violations under the aggravated circumstances of this case, as authorized at Fed. R. Civ. P. 41(b).

Fed. R. Civ. P. 41(b) provides, in pertinent part:

> For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him... Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision...operates as an adjudication upon the merits.

In Nevijel v. North Coast Life Ins., 651 F.2d 671, 673-674 (9th Cir., 1971), the Ninth Circuit affirmed the trial court's dismissal, with prejudice, for the plaintiff's failure to comply with Fed. R. Civ. P. 8(a) and 8(e):

> A complaint which fails to comply with rules 8(a) and 8(e) may be dismissed with prejudice pursuant to rule 41(b). Schmidt v. Herrmann, 614 F.2d 1221 (9th Cir., 1980); Von Poppenheim v. Portland Boxing and Wrestling Commission, 442 F.2d 1047 (9th Cir., 1971); cert denied 404 U.S. 1039, 92 S.Ct. 715, 30 L.Ed.2d 731 (1972); Corcoran v. Yorty, 347 F.2d 222 (9th Cir.) cert denied 382 U.S. 966, 86 S.Ct. 458, 15 L.Ed.2d 370 (1965); Agnew v. Moody, 330 F.2d 868 (9th Cir.) cert denied 379 U.S. 867, 85 S.Ct. 137, 13 L.Ed.2d 70 (1964).

The court observed that aggravated circumstances can make a dismissal with prejudice under Rule 41(b) appropriate and that, on appeal, a trial court's decision will be reviewed only under an abuse of discretion standard, Nevigel, at 674.

The Santa Barbara... case, supra, is in accord regarding a pro se plaintiff's complaint:

> [A] complaint which fails to comply with Rule 8(a) and (e), FRCP, may be dismissed with prejudice pursuant to Rule 41(b), FRCP, and this court's inherent power.

In this case, most of the defendants had been previously sued by Dr. Plymale. The present lawsuit was a more egregious offense to Rule 8 than in its original form. Given what must on refiling be regarded as gross and knowing violations of the rules of pleading, dismissal with prejudice was proper. The Sixth Circuit acted properly in affirming the dismissal.

## CONCLUSION

Respondents, Robert Weyhing, Michael V. Kell, and H. William Butler, ask that Petitioner Richard W Plymale's Petition for Writ of Certiorari be denied.

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